IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 686 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA
and
Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

VANKAR RAMABHAI SENDHABHAI

Appearance:

1. Criminal Appeal No. 686 of 1986

MR KC SHAH APP for appellant - State

MR SATISH R PATEL for Respondent No. 1-4

CORAM : MR.JUSTICE A.M.KAPADIA
and
MR.JUSTICE H.H.MEHTA

Date of decision: 18/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. This appeal which is filed under Section 378 of the Code of Criminal Procedure, 1973 ('the Code' for short) is directed against the judgment and order dated 27.2.1986 rendered by learned Additional Sessions Judge, Mehsana in Sessions Case No.126 of 1984 by which respondents who are the original accused (hereinafter referred to as 'the accused') came to be acquitted of the offences punishable under Sections 302 read with Section 34 and 114 and Sections 323, 504 and 506 (2) of the Indian Penal Code ('the IPC' for short) and Section 135 of the Bombay Police Act ('the BP Act' for short).

2. Facts of the case have been detailed in the judgment of the learned Additional Sessions Judge, therefore, it is not expedient for us to repeat the same all over again in verbatim in detail in this judgment. However, the basic facts which are necessary to be discussed in this appeal are that:

2.1. On 30.7.1984 deceased Somabhai was at his residence. At that time accused Nos.1 and 3 came there and there was altercation between them and the deceased. Accused No.1 was having a scythe (dharia) in his hand and accused No.3 was having a hoe (kodali) in her hand. Accused No.1 inflicted a blow with the said weapon on the left side of the forehead of Somabhai whereas accused No.3 gave blow to Somabhai with the hoe in her hand. During that time, Shivabhai Nanabhai, brother-in-law of Somabhai and 2/3 other persons came there. Same way, accused Nos.2 and accused No.4 also came there. According to the prosecution case, accused Nos.2 and 4 gave fist blow to Somabhai. During this incident, people gathered there and they came to the rescue of Somabhai. Thereafter Somabhai was taken to Visnagar Dispensary where preliminary treatment was given to him and he was discharged on the next day.

2.2. After receipt of the injury Somabhai lodged a complaint at Visnagar Police Station about the incident that took place in his house. The said complaint was transferred to Vijapur Police station where it was registered for commission of the offences punishable under Sections 327, 324, 504, 502 (2) and 114 of the IPC and 135 of the BP Act. Pursuant to the said complaint offence was registered against the accused and investigation was put into motion.

2.3. Since the health of injured Somabhai deteriorated, he was admitted to Civil Hospital,

Ahmedabad on 8.8.1984 and he died on 9.8.1984.

2.4. Since Somabhai died in Civil Hospital, Ahmedabad, on 9.8.1984, offence under Section 302 of the IPC was added and a report in that regard was made to the concerned magisterial court. As the deceased died in Civil Hospital, Ahmedabad on 9.8.1984, autopsy was performed.

2.5. At the conclusion of the investigation, as evidence for commission of offences of murder and causing grievous injuries to deceased Somabhai was divulged against the accused, they were charge-sheeted in the Court of learned Chief Judicial Magistrate of Mehsana who committed the case to the Court of Sessions, Mehsana.

2.6. The learned Additional Sessions Judge, Mehsana framed charge against all the accused for commission of the offences punishable under Sections 302 read with Sections 43 and 114 and 323, 504 and 506 (2) of the IPC and 135 of the BP Act against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Therefore they were tried by the learned Additional Sessions Judge, Mehsana in Sessions Case No.126 of 1984.

2.7. In order to bring home the charge levelled against the accused, prosecution examined in all 16 witnesses and placed reliance on their oral testimony as well as produced several documents upon which also heavy reliance was placed.

2.8. At the end of the trial, further statements of the accused were recorded under Section 313 of the Code wherein also they pleaded their innocence and stated that they have not committed any offence. However, they did not lead any evidence nor they examined any witness in their defence. They further stated that they have also filed a cross complaint against deceased Somabhai and his brother-in-law Shivabhai Nanabhai for beating them and Somabhai received injuries as he fell down.

2.9. The learned Additional Sessions Judge on analysis, appreciation, evaluation and scrutiny of the evidence on record came to the conclusion that the homicidal death of Somabhai is not proved as he died on account of cardiovascular stroke. He also held that the witnesses examined by the prosecution are not trustworthy as they tried to improve their statement recorded before the police under Section 162 of the Code while giving their evidence before the court. The learned trial Judge held that the prosecution has failed to prove that the

injury which was caused on the forehead of deceased Somabhai was caused by accused No.1. It is also held by him that the prosecution has also failed to prove that accused Nos. 2 to 4 caused simple injuries to the deceased. Same way, the learned trial Judge held that the prosecution has also failed to prove offences under Sections 504 and 506 (2) of the IPC. Therefore, the learned trial Judge vide impugned judgment and order acquitted the accused of the offences with which they were charged which has given rise to the present appeal.

3. We have considered the submissions advanced by Mr. K.C. Shah, learned APP for the appellant - State and Mr. S.R. Patel, learned advocate for the accused. We have also perused the record and proceedings of the case and scrutinised the evidence minutely. As per the prosecution case, deceased Somabhai on receipt of the injury on his forehead inflicted by accused No.1 with scythe died after 8 days.

5. Now let us scrutinise the evidence in this regard. P.W.1, Dr. Shivabhai Joitaram Patel, who has been examined at Ex.19, stated that he treated deceased Somabhai initially. He examined the injured on the same day and noted the following injuries:

(i) 1 CLW on left frontal region 3/4 cm. x 1/4 cm.
x skin deep on 2 cm. 2 cm. above left eye brow.

(ii) Tenderness on the left and right side and middle
part of back side.

He issued certificate in this regard which is on record at Ex.20. As per his testimony, the injured was discharged on the next day.

6. According to the prosecution case eight days thereafter, health of injured Somabhai deteriorated and he was admitted to Civil Hospital, Ahmedabad on 8.8.1984 and he died on 9.8.1984 while he was in hospital. Autopsy was performed by P.W. 15, Dr. Pankaj Ramanlal Sirolavala, who was examined at Ex.47. He clearly opined that the injured died because of the cardiovascular stroke. He also testified that pieces of viscera, brain, lungs, heart, liver and kidney were taken to send for pathological report.

7. P.W.16, . Sudeshkumar Tejsinh Chaudhari, who was examined at Ex.50, during his oral testimony, testified that deceased died because of cardiovascular stroke.

8. In view of the aforesaid evidence there cannot be two opinion that the deceased died because of cardiovascular stroke and, therefore, there is no escape from the conclusion that the deceased has not died a homicidal death. Therefore, charge under Section 302 of the IPC could not be proved and the learned trial Judge rightly came to the conclusion that the deceased has not died a homicidal death but it was a natural death.

9. Now this takes us to scrutinise the evidence to ascertain whether other offences alleged in the complaint against the accused are proved or not. In this connection, on having minute scrutiny of the evidence of P.W.2, Shivabhai Nanabhai, EX.21, P.W.3 Surajben, widow of Somabhai Varvabhai, Ex.22, P.W.4, Dhulabhai Varubhai, Ex.23, P.W.5, Umedbhai Shivabhai, Ex.24, P.W.6, Dhanabhai Shankerbhai, Ex.25 and P.W.7, Revabhai Varvabhai, Ex.26, it is seen that they are relatives of the deceased. P.W.4 Dhulabhai and P.W.5 Umedbhai, unequivocally stated that accused had already inflicted injury on the forehead of the deceased prior to their reaching the house of the deceased. P.W.7, Revabhai also appears to be a hearsay witness. In view of the aforesaid unsatisfactory evidence, the learned trial judge has very rightly reached to the conclusion that there was enmity between two groups and a complaint was also filed by the side of the accused against deceased Somabhai and his brother-in-law and, therefore, other offences alleged against the accused have also not been proved.

10. This being an acquittal appeal preferred by the State and where two views of the evidence are reasonably possible and the trial Court opted for one favouring acquittal, the High Court should not disturb the same merely on the ground that if it were in the position of the trial Court, it would have taken the alternative view and convicted the accused accordingly. It cannot be said that the appreciation of the evidence by the trial Court is perverse or that only one opinion, that is, that the accused were guilty of the offence was possible. In these circumstances, the judgment of acquittal recorded by the trial Court deservers to be confirmed (See (i) Antarsingh v. State of M.P., AIR 1979 SC 1188 and (ii) Molu v. State of Haryana, AIR 1976 SC 2499).

11. On overall appreciation of the evidence on record, this Court is satisfied that there is no infirmity in the judgment recorded by the trial Court acquitting the accused. There is cogent and convincing reason to acquit the accused. The learned APP has failed to dislodge the reasons given by the learned trial Judge

and convince this Court to take a view contrary to the one taken by the learned trial judge. Therefore, the impugned judgment and order of acquittal recorded by the learned trial Judge requires to be confirmed.

12. For the foregoing reasons, the appeal filed by the appellant - State being meritless deserves to be dismissed and accordingly it is dismissed. The respondents/accused are on bail. Therefore, their bail bonds shall stand cancelled and sureties are discharged.

(A.M. Kapadia, J.)

(H.H. Mehta, J.)

(karan)